contract arising between his principal and the defendant company. *North River Bank* v. *Aymar*, 3 Hill (N. Y.) 262. But his subsequent attempt to create a different contract and to incorporate it in the policy should have been held futile, since an original contract of insurance cannot be formed when the insured knows the property has been destroyed. *Wales* v. *Bowery Fire Ins. Co.*, 37 Minn. 106, 33 N. W. 322. Nor does it matter that when the policy was executed the plaintiff did not know it was a new contract, or that his agent did not know of the loss of the property, for the objection is not bad faith but lack of consideration. Thus the policy was absolutely void and could not become the written understanding of the parties by merging the oral contract. *Nebraska, etc. Ins. Co.* v. *Seivers*, 27 Neb. 541, 43 N. W. 351. *Cf. Pratt* v. *Dwelling House, etc. Ins. Co.*, 130 N. Y. 206, 217, 29 N. E. 117. Hence the defendant company did not seek to traverse the parol evidence rule by showing that the parties intended to make an agreement different from that summed up in the policy; its aim was simply to prove that the latter was not a contract because of the nonexistence of conditions required for the formation of a contract. *Pym* v. *Campbell*, 6 E. & B. 370. See 4 WIGMORE, EVIDENCE, § 2400. The resulting conclusion is that the court erred in disallowing evidence of the prior agreement to prove that the policy was an original agreement and void. *Salisbury* v. *Hekla Fire Ins. Co.*, 32 Minn. 458, 21 N. W. 552. *Contra, Ins. Co.* v. *Lyman*, 15 Wall. (U. S.) 664. Mistaking the parol evidence rule for a rule of evidence, when in fact it is a principle of substantive law, is the source of the error. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, 397.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — IMPLIED COVENANT BY LANDLORD NOT TO INTERFERE WITH TENANT'S USE OF THE PREMISES. — In a lease was a covenant of quiet enjoyment by the landlord and a covenant by the tenant to conduct a restaurant on the premises. The landlord let adjoining premises to be used for noisy auction rooms. The tenant sues the landlord. *Held*, that he may recover. *Malzy* v. *Eicholz*, 32 T. L. R. 152 (K. B. Div.).

In an ordinary contract it is a condition to the promisee's right to enforce the promise that he does nothing to interfere with its performance. *Peck* v. *United States*, 102 U. S. 64; *European, etc. Co.* v. *Royal, etc. Co.*, 30 L. J. C. P. 247. Some cases hold that a promise by each party not to interfere with the performance of the other is necessarily implied from the express contract of the parties. *Patterson* v. *Meyerhofer*, 204 N. Y. 96, 97 N. E. 472; *Levy and Hipple Motor Co.* v. *City Motor Cab Co.*, 174 Ill. App. 20. See 17 HARV. L. REV. 46. It is true that in these latter cases the injury which the plaintiff complained of was the deprivation of the profits which he would have made, had he been able by performing his promise to put himself in a position to demand the performance of the defendant's express promise. But it cannot affect the implication of the promise, that the damages from its breach have no connection with the express contract. Some courts regard an interference by a landlord with the tenant's expected use of the premises as a breach of the landlord's covenant of quiet enjoyment. *Tebb* v. *Cave*, [1900] 1 Ch. 642; *McDowell* v. *Hyman*, 117 Cal. 67, 48 Pac. 984. *Contra, Tucker* v. *Du Puy*, 210 Pa. St. 461, 60 Atl. 4. And in England such an interference is also actionable as being a derogation from the grant of the landlord. *Grosvenor Hotel Co.* v. *Hamilton*, [1894] 2 Q. B. 836. But it is submitted that the principal case is best supported by implying, on the above principles of contracts, a covenant that the landlord will not interfere with the tenant's performance of his agreement to use the property in a certain way.

RENT CHARGES — ESTATE TAIL — EFFECT OF DISENTAILING ASSURANCE. — A tenant in fee simple of lands granted a rent charge issuable out of the

lands to trustees in fee to the use of successive tenants in tail with ultimate remainder to the use of the settlor and his heirs. One of the tenants in tail, while in the enjoyment of the rent charge, executed a valid disentailing assurance. *Held*, that the tenant acquired an equitable fee simple in the rent charge. *In re Frank's Estate*, [1915] 1 Ir. 387 (Ct. of Appeal).

Two tenants in tail of equitable rent charges, which had been granted to them *de novo* without remainders over, executed a disentailing deed. *Held*, that the deed created merely a base fee in each rent charge determinable on the failure of the issue in tail. *Pinkerton* v. *Pratt*, [1915] 1 Ir. 406 (Ct. of Appeal).

A rent charge may be entailed like any other tenement. *Smith* v. *Farnaby*, Carter 52; *Drew* v. *Barry*, I. R. 8 Eq. 260, 283. See CHALLIS, REAL PROPERTY, 299. And, like any other tenant in tail, a tenant in tail of a rent charge can bar the succeeding estates thereof. *Smith* v. *Farnaby*, *supra*; *Anonymous*, 12 Mod. 513. Similarly an equitable remainder may be barred just as though the estates were legal. *Brydges* v. *Brydges*, 3 Ves. Jr. 120; *Boteler* v. *Allington*, 1 Bro. C. C. 72. See *Salvin* v. *Thornton*, Ambler 545, 549. It is said that an equitable tenant in tail cannot cut off a legal fee. *Brydges* v. *Brydges*, *supra*. However, such a tenant can bar the equitable remainder though it is vested in the person with the legal fee. *Robinson* v. *Cuming*, 1 Atk. 473. This has been explained by saying that the court will not allow a merger since that would prevent the barring of the equitable remainder. See LEWIN, TRUSTS, 12 ed., 12. Since this means simply that the equitable remainder can be barred regardless of merger, the analogy of equitable estates gives but feeble support for the distinction made by the court in the principal cases. However, the fact that an estate of rent charge is created only by the parties, whereas equitable estates are frequently raised by the courts, may indicate that every legal estate does not contain an incipient estate of the former sort though it does of the latter. And the text-writers and some *dicta* support the principal cases. *Chaplin* v. *Chaplin*, 3 P. Wm. 229, 230. See 2 JARMAN, WILLS, 6 ed., 1153; THEOBALD, WILLS, 7 ed., 500; CHALLIS, REAL PROPERTY, 2 ed., 299.

RES JUDICATA — PERSONS CONCLUDED — PERSONS ASSISTING IN THE DEFENSE. — One hundred underwriters insured a yacht by identical policies under which each was severally but not jointly liable for his proportionate share. The yacht was destroyed. In an action by the owner against one of the underwriters the defense was conducted under the direction and at the expense of all. On judgment being given against him, the owner now sues another of the underwriters. *Held*, that the matter is not *res judicata*. *Fish* v. *Vanderlip*, 156 N. Y. Supp. 38 (Sup. Ct.).

A judgment is conclusive only as between parties or persons in privity with parties. *Litchfield* v. *Goodnow's Administrator*, 123 U. S. 549; *Yorks* v. *Steele*, 50 Barb. (N. Y.) 397. See 2 BLACK, JUDGMENTS, 2 ed., §§ 534, 600. But a party, in this sense, need not be a party of record. Thus a person not nominally a party may subject himself to be concluded by openly and actively assuming the conduct of the defense of an action in which he is interested. *Castle* v. *Noyes*, 14 N. Y. 329; *Frank* v. *Wedderin*, 68 Fed. 818; *Empire State Nail Co.* v. *American Solid Leather Button Co.*, 71 Fed. 588. But the matter will not be made *res judicata* by such participation when, as in the principal case, the person assisting in the defense does so, not because of some direct interest of his own in the subject matter of the particular action or because of some responsibility to the defendant depending upon the decision, but merely because he has similar though entirely separate rights against the plaintiff. *Litchfield* v. *Goodnow's Administrator*, *supra*; *Rumford Chemical Works* v. *Hygienic Chemical Co.*, 215 U. S. 156. See *Schroeder* v. *Lahrman*, 26 Minn.